ORIGINAL FILE

VINCENT A PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
WILLIAM J. FRANKLIN
JOHN F. GARZIGLIA
TODD J. PARRIOTT
NEAL J. FRIEDMAN
ELLEN S. MANDELL
HOWARD J. BARR
LOUISE CYBULSKI#
JENNIFER L. RICHTER \*

. NOT ADMITTED IN D.C.

PEPPER & CORAZZINI

ATTORNEYS AT LAW

200 MONTGOMERY BUILDING 1776 K STREET, NORTHWEST

WASHINGTON, D. C. 20006

(202) 296-0600

ROBERT LEWIS THOMPSON GREGG P. SKALL E. THEODORE MALLYCK OF COUNSEL

FREDERICK W. FORD

TELECOPIER (202) 296-5572

RECEIVED

JUL - 6 1992

Federal Communications Commission
Office of the Secretary

July 6, 1992

Ms. Donna R. Searcy Secretary Federal Communications Commission Washington, D.C. 20554

Attention: Office of the Managing Director

Re: Request for Refund of Hearing Fee for Application of Diane K. Hitt (FCC File No. BPH-910225MI)

Dear Ms. Searcy:

The purpose of this letter is to request, on behalf of Diane K. Hitt, an applicant for a new FM station on Channel 228A at Rosamond, California (FCC File No. BPH-910225MI) a refund, pursuant to Section 1.1111(b)(2) of the Commission's Rules, of her hearing fee.

By <u>Hearing Designation Order</u>, DA 92-640, released June 11, 1992, the application of Diane K. Hitt was designated for hearing with a notice of appearance due on or before July 1, 1992. Rather than filing a notice of appearance, Diane K. Hitt reached a settlement with Rosamond Radio, Inc., another applicant in the proceeding, for a dismissal of the Hitt application. A copy of the Joint Petition for Approval of Settlement Agreement is attached. It is expected that the presiding judge will grant the joint petition, and dismiss the Hitt application. Upon such a dismissal of the Hitt application, it is respectfully requested that the \$6,760 hearing fee submitted by Diane K. Hitt to the Commission on July 15, 1991 be refunded to the applicant.

No. of Copies rec'd_	01	_/
List A B C D E		

Ms. Donna R. Searcy July 6, 1992 Page 2

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,

John F. Garziglia

Enclosure

cc: Administrative Law Judge Joseph P. Gonzalez (via hand delivery) (w/o enclosure)
Gary Schonman, Esquire (via hand delivery) (w/o enclosure)
Thomas Schattenfield, Esquire (w/o enclosure)
Arthur V. Belendiuk, Esquire (w/o enclosure

JUL - 6 1992

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In re Applications of )	MM Docket No. 92-121
ROSAMOND RADIO, INC.	File No. BPH-910225MG
JAMIE LEE COBERLY	File No. BPH-910225MH
DIANE K. HITT	File No. BPH-910225MI
For construction permit for a ) New FM Station on Channel 228A ) in Rosamond, California )	

To: Joseph P. Gonzalez
Administrative Law Judge

#### JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

1. Rosamond Radio, Inc. ("Rosamond") and Diane K. Hitt ("Hitt"), applicants for a new FM station to operate on Channel 228A in Rosamond, California (File Nos. BPH-910225MG and BPH-910225MI, respectively), respectfully request, pursuant to Section 73.3525 of the Commission's Rules, that the Settlement Agreement ("Agreement") attached hereto as Exhibit 1 be approved and that, upon approval, Hitt's application be dismissed with prejudice.

- The Agreement provides for Rosamond to make a cash 2. payment ("Settlement Payment") to Hitt in consideration for the dismissal of her application. The amount of the Settlement Payment to be made to Hitt is predicated upon (1) the Commission's determination that the claimed legitimate and prudent expenses incurred in the filing and prosecution of her application for the Rosamond facility are valid as claimed, or (2) if the Commission determines that some of the claimed expenses are not reimbursable, in such lesser amount as the Commission determines is valid. The undertakings of Hitt to dismiss her application and the undertakings of Rosamond to make the Settlement Payment are conditioned upon the Commission's action (1) approving the Agreement and (2) dismissing Hitt's application with prejudice becoming a "Final Action" as that term is defined in Paragraph 4 of the Settlement Agreement (Exhibit 1, hereto).
- 3. Attached as Exhibits 2 and 3 hereto are the Declarations of each of the applicants, Rosamond and Hitt, respectively, to the effect that they did not file their applications for the purpose of reaching or entering into a settlement agreement.
- 4. Grant of this Petition clearly would serve the public interest in that it would save substantial time and the resources of the parties and the Commission and hasten the initiation of a new local FM service on Channel 228A in Rosamond, California.

WHEREFORR, for the reasons set forth hereinabove, the parties hereto respectfully submit that this Petition should be granted.

Respectfully submitted,

Thomas Schattenfield

Susan A. Marshall

Arent, Fox, Kintner, Plotkin & Kahn 1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5339 (202) 857-6000

Counsel for Rosamond Radio, Inc.

John F. Garziglia, Bequire

Pepper & Corassini 1706 K Street, N.W.

Suite 200

Washington, D.C. 20006

(202) 296-0600

Counsel for Diane K. Hitt

Date: June 30, 1992

#### EXHIBIT 1

SETTLEMENT AGREEMENT

#### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into between Rosamond Radio, Inc. ("Rosamond") and Diane K. Hitt ("Hitt") to be effective as of the 30th day of June, 1992.

#### WITNESSETH:

WHERRAS, Rosamond and Hitt each have pending before the Federal Communications Commission ("FCC") applications for a construction permit for a new FM radio broadcast station to operate on Channel 228A at Rosamond, California (FCC File Nos. BPH-910225MG and BPH-910225MI, respectively), which applications are mutually exclusive with one another and with the application filed by Jamie Leigh Coberly (File No. BPH-910225MH);

WHEREAS, the aforementioned mutually exclusive applications have been designated for hearing in MM Docket No. 92-121; and

whereas, the dismissal of Hitt's application would serve the public interest by expediting the proceeding in MM Docket No. 92-121, thereby conserving the resources of the parties and the FCC and hastening earlier institution of a new FM radio service at Rosamond, California.

MOW, THEREFORE, in consideration of the foregoing and the mutual promises herein contained, the parties hereto, intending to be legally bound, agree as follows:

1. In consideration for Hitt dismissing her application for a new FM station on Channel 228A at Rosamond, California, Rosamond shall pay Hitt the sum of Twenty-Thousand Eight-Hundred Seventy-Nine Dollars and Forty-Two Cents (\$20,879.42), or such lesser amount as the Commission may approve, as reimbursement

for Hitt's legitimate and prudent expenses incurred in connection with the filing and prosecution of her application for the Rosamond station (the "Settlement Payment") within ten (10) days after an FCC action dismissing Hitt's application with prejudice becomes a "Final Action," as that term is defined in Section 4 hereof ("Due Date"). The Settlement Payment will be made in the following manner:

- a. Within ten (10) days after the filing of the Joint Petition referred to in paragraph 2 hereof, Rosamond will deposit a check in the amount of the Settlement Payment ("Escrow Deposit") with Thomas Schattenfield of the law firm of Arent, Fox, Kintner, Plotkin & Kahn as escrow agent ("Escrow Agent"). Upon receipt of the Escrow Deposit, Thomas Schattenfield shall notify counsel for Hitt by telecopy or first class mail that the Escrow Deposit has been received and shall identify the bank in which the escrow account has been established.
- b. On the Due Date, the Escrow Agent shall deliver to the attorney of record for Hitt a check payable to Hitt for the full amount of the Settlement Payment. Any interest earned on the Escrow Deposit will be paid to Rosamond.
- 2. The parties hereto shall file with the FCC on or before July 1, 1992, a Joint Petition pursuant to Section 73.3525 of the FCC's Rules, together with such other documents as may be required by that section, requesting that the FCC approve this Agreement and dismiss Hitt's application with prejudice. The parties shall cooperate fully with one another and take whatever

additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, this Agreement.

- 3. The obligations of the parties under this Agreement are expressly conditioned upon the FCC taking "Final Action" within the meaning of Section 4 hereof, approving this Agreement and dismissing Hitt's application with prejudice.
- 4. For the purposes of this Agreement, an action by the FCC approving this Agreement shall be a "Final Action" when the time for filing any requests for administrative or judicial review of such action, or for the FCC to reconsider such action on its own motion, has lapsed without any such filing or motion having been filed or, in the event of any such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken and the time for seeking further administrative or judicial review with respect to the action shall have expired without any request for such further review having been filed.
- 6. The parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.
- 7. Unless otherwise provided for in this Agreement, all notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested,

postage prepaid and pending the designation of another address, addressed as follows:

If to Rosamond Radio, Inc.:

P. Dale Ware, Ph.D. 2818 Gus Court Lancaster, CA 93536

With copy to:

Thomas Schattenfield, Esquire Arent, Fox, Kintner, Plotkin & Kahn 1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5339

If to Diane K. Hitt:

Ms. Diane K. Hitt 18515 East Avenue H-6 Lancaster, CA 93535

With copy to:

John F. Garzigila, Esquire Pepper & Corazzini 200 Montgomery Building 1776 K Street, N.W. Washington, D.C. 20006

- 8. This Agreement constitutes the entire understanding of the parties and no other consideration, action or forbearance is contemplated or relied upon by them.
- 9. Should the parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.
- 10. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and assigns.

11. This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by all of the parties.

IN WITHESS WHEREOF, the parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

ROSAHOMD RADIO, INC.

· T. Xale

P. Dale Ware, Ph.D., President

DIAME K. HITT

11. This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by all of the parties.

IN WITHESS WHEREOF, the parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

ROSAMOND RADIO, INC.

P. Dale Ware, Ph.D., President

DIAME K. HITT

\_ ::-

Diano, K. 1/5th

#### EXHIBIT 2

DECLARATION OF P. DALE WARE, PH.D.

#### DECLARATION UNDER PENALTY OF PERJURY

- P. Dale Ware, Ph.D., hereby declares under penalty of perjury:
- 1. I am President of Rosamond Radio, Inc. ("Rosamond"), an applicant for a new FM station to operate on Channel 228A, Rosamond, California (File No. BPH-910225MG).
- 2. Rosamond's application was not filed for the purpose of reaching or carrying out a settlement with any other mutually exclusive application for the Rosamond, California FM station.
- 3. Neither I nor anyone else representing Rosamond has paid or promised to pay, orally or in writing, money or any other thing of value in connection with the proposed dismissal of the application of Diane K. Hitt ("Hitt") for Channel 228A, in Rosamond, California (File No. BPH-910225MI), other than the proposed reimbursement of Hitt's legitimate and prudent expenses as set out in the foregoing Settlement Agreement and as approved by the FCC.
- 4. Approval of the Settlement Agreement between Rosamond and Hitt will serve the public interest by saving substantial time and the resources of the parties and the FCC and hastening the initiation of a new local FM service at Rosamond, California.

ROSAMOI	ND RADIO	INC.	
By 7	Cale	Na	
P. 1	Dale Ware,	Ph.D.,	President
6	-30-9	72	
Date			

### EXHIBIT 3

DECLARATION OF DIANE K. HITT

#### DECLARATION

- I, Diane K. Hitt, do hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:
- 1. Other than the consideration described in the settlement agreement between Diane K. Hitt and Rosamond Radio, Inc., neither I nor anyone connected with me has been paid or promised any money or other consideration of any kind in connection with the dismissal of my application for a new FM broadcast station at Rosamond, California.
- 2. My application was not filed for the purpose of reaching or implementing a settlement agreement.
- 3. The proposed settlement is in the public interest as it would speed the initiation of a new local FM service on Channel 228A at Rosamond, California.
- 4. The nature of the consideration to be paid to me is a check in the amount of \$20,879.42 for the reimbursement of my legitimate and prudent expenses incurred in connection with the preparation and prosecution of my application for a new FM station at Rosamond, California. Attached to this Declaration is an itemization of the expenses for which I am seeking reimbursement.
- 5. No other oral or ancillary agreement exists with respect to the dismissal of my application.

Executed this 307 day of June, 1992.

Diane K With

. .\_-

#### <u>Attachment</u>

Expenses incurred in the filing and the prosecution of the application of Diane K. Hitt:

Company	Amount Spent
Aviation Systems (consultant for FAA approval for tall tower) Newspaper ads FCC application filing fee Legal fees to Booth, Freret & Imlay Legal fees to Pepper & Corazzini Engineering fees to Gary Engineering Engineering fees to Larry Morton & Associates	\$ 1,299.60 360.00 2,030.00 1,731.70 4,785.18 5,944.00
Total	\$20,879.42

#### INVUICE

#### AVIATION SYSTEMS ASSOCIATES, INC.

23430 HAWTHORNE BOULEVARD SKYPARK 3, SUITE 200 TORRANCE, CA 90505 (310) 378-3299

INV. DATEJanuary 11, 1992

INV. NO. 12085 Page 1 of 1

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#### INVOICE

#### AVIATION SYSTEMS ASSOCIATES, INC.

23430 HAWTHORNE BOULEVARD SKYPARK 3, SUITE 200 TORRANCE, CA 90505 (310) 378-3299

INV. DATEFebruary 15, 1992

ASA TAX ID: 95-3405669

INV. NO. 12116 Page 1 of 1

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#### 23430 HAWTHORNE BOULEVARD SKYPARK 3, SUITE 200 TORRANCE, CA 90505 (310) 378-3299

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INV. NO. 12166 Page 1 of 1

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### BOOTH, FRERET & IMLAY

BUITE 204

ROSERT IS SOUTH JR. (1911-1991) JALIAN P. PRERET CHRISTOPHER D. INLAY 1233 20TH STREET, N.W. WASHINGTON, D.C. 20086

July 1, 1992

YELEPHUNE (802) 804-0100 YELECOMER (802) 803 1312

Via Facsimile 296-5572

John F. Garsiglia, Esquire Pepper & Corazsini 1776 K Street, N.W., Suite 200 Washington, D.C. 20006

Re: Ms. Diane Hitt

Dear John:

Diane Hitt asked that I send to you the total of our charges to her to date. I understand that you have arrived at a settlement with respect to her application, and that she will be compensated for her expenses in exchange for the dismissal of her application.

Our master ledger sheet indicates that Ms. Hitt was billed, for professional services, and for telephone, xerox and postage expenses, a total amount of \$1731.70 between March and October, 1991. All of that amount was promptly paid by Ms. Hitt. Our professional services rendered included consultation with her concerning the preparation and structure of her application, coordination with her consulting engineer, preparation of the application, review of competing applications, and advice to her concerning strategies to be pursued relative to the anticipated hearing proceeding with competing applicants.

Should you need additional proof of this, please do not hesitate to call. You may use this letter to Ms. Hitt's benefit in any manner necessary.

Yours very truly,

Christopher D. Imag

cc: Diane Hitt

#### PEPPER & CORAZZINI

VINCENT A PEPPER
ROBERT F. CORAZZINI
PETER GUTMANN
WILLIAM J. FRANKLIN
JOHN F. GARZIGLIA
TODD J. PARRIOTT
NEAL J. FRIEDMAN
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HOWARD J. BARR
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JENNIFER L. RICHTER \*\*

ATTORNEYS AT LAW
200 MONTGOMERY BUILDING
1776 K STREET, NORTHWEST
WASHINGTON, D. C. 20006

(202) 296-0600

ROBERT LEWIS THOMPSON GREGG P. SKALL E-THEODORE MALLYCK OF COUNSEL FREDERICK W. FORD 1909-1986

TELECOPIER (202) 296-5572

June 30, 1992

### Legal Fees and Expenses for Diane K. Hitt Application

Legal services rendered in connection with the prosecution of the application of Diane K. Hitt for Channel 228A at Rosamond, California consisting of the following: telephone calls with client regarding FCC application; legal research and filings regarding competing applications; preparation of analysis of competing applicants; correspondence with client relating to FAA approval; correspondence to engineer regarding application; correspondence to client regarding hearing procedures; legal research regarding filings made by competing applicants; correspondence to client regarding release of hearing designation order; and preparation for hearing.

Legal services including miscellaneous administrative costs for telecopy, telephone, federal express, duplication, postage and research materials

\$4,785.18

PEPPER & CORAZZINI

John F. Garziglia

Counsel to Diane K. Hitt

## Gary Engineering

44830 N. ELM

LANCASTER, CA 93534-4896

(805) 945-4413

June 29, 1992

Ms. Diane Hitt 18518 East Avenue H-6 Lancaster, California 93535

Dear Ms. Hitt:

As you requested, below is a summary of the charges incurred regarding your application for a new FM radio station in Rosamond, California.

- 1. Search of Kern County records of property ownership in that area.
- Acquiring legal description and ownership of property in general vicinity of where station would be located.
- 3. Securing tentative lease agreement with Linda and Ray Laughinghouse, owners of said property, for transmitter and tower location.
- 4. Obtaining the exact coordinates using the USGS 7.5 minute map.
- 5. Enlisting Lawrence L. Morton Associates to complete your engineering.
- Enlisting Aviation Systems Associates, Inc. to acquire FAA approval because of tower height in excess of 500 feet.

Total time involved: 118 hours at \$50.00 per hour, plus out-of-pocket expenses is a total charge of \$5944.00.

Very truly yours,

Bruce Gary



#### **LAWRENCE L. MORTON ASSOCIATES**

1231 MESA OAKS LANE MESA OAKS, CALIFORNIA 93436 (805) 733-4275 / FAX (805) 733-4793

June 27, 1992

Via: Facsimile Transmission

John F. Garziglia, Esquire Pepper & Corazzini 1776 K Street, N.W. Washington, D.C. 20006

RE: Engineering Fees in Connection With Diane Hitt Application

Dear John:

I have reviewed my records to determine the exact amount of the fees collected from Ms. Diane K. Hitt in connection with her commercial FM application for Rosamond, California.

The total amount billed and received from Ms. Hitt from the beginning of 1991 to present is \$4728.94. This includes technical studies to determine the feasibility of numerous potential sites, telephone consultation and preparation of the engineering portion of the FCC Form 301 and associated engineering exhibits.

If you have any questions or need additional information, please let me know.

Sincerely Yours,

Lawrence L. Morton, P.E.

cc: Ms. Diano K. Hitt